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Agreed Fiscal Regime



AGREED FISCAL REGIME-PART 2—INCOME TAX

Liability to and rate of income tax

4. (1) Subject to the principles and rules set out in this Schedule, and in particular to paragraph 13 of this Part, the Company shall pay to Ghana, in respect of each Tax Year, income tax at the rate of 35% of its taxable income attributable to Ghana in the Tax Year.

(2) The taxable income of the Company attributable to Ghana shall be calculated as set out in this Part following the apportionment between the States of WAGP income, allowable expenses and capital allowances as set out in this Part of this Schedule.

(3) In calculating the amount due in respect of income tax from the Company to Ghana, credit shall be given for any state liability which the Company has elected under subparagraph (8) of this paragraph.

(4) Under this Schedule "state liability" means any or all of the following:

- (a) an amount of money which has been determined under the Dispute Resolution Procedure to be owing by Ghana to the Company under clause 36.4 of the International Project Agreement;
- (b) an amount of money which has been determined in accordance with this Schedule to be owing by Ghana to the Company under the Fiscal Laws and in respect of which no further appeal is permitted under Part 7 of this Schedule (whether as a result of the expiry of any time limit or otherwise) or in respect of which Ghana has confirmed that no appeal will be made by it;
- (c) an amount of money which is deemed under sub-paragraphs

(5) or (6) to be owing by Ghana to the Company under this Part;

- (d) an amount of money which has been determined under paragraph 7 of this Part to be owing by Ghana to the Company;
- (e) interest on any of the above amounts arising under paragraph 20(2) of this Part or clause 44.3 of the International Project Agreement.

(5) Where the Company claims that an amount is owing by Ghana to the Company under the Fiscal Laws including interest arising under paragraph 20 (2) of this Part in respect of which a further appeal is permitted under Part 7 of this Schedule; and in respect of which Ghana has not confirmed that no appeal will be made by it, the Company may give to the WAGP Authority and to the Tax Authority written notice setting out particulars of the amount in question and the circumstances in which the liability arose.

(6) If Ghana disputes that any part of the amount set out in the notice is owing to the Company, it may within 30 days of receipt of such notice make application to the WAGP Tribunal for a determination that the amount or a part of it is not owing by Ghana to the Company and if Ghana does not make such an application, or does not make it in respect of the whole of the amount claimed, then for the purpose of this Schedule the amount stated in the notice, or if Ghana disputes only part of the amount stated in the notice the balance of the amount claimed, shall be owing by Ghana to the Company and shall be a state liability in accordance with subparagraph (4)(a) above.

(7) If Ghana makes an application in accordance with sub-paragraph (5) to the WAGP Tribunal for a determination that an amount is not owing by it to the Company and

- (a) the application is dismissed in whole by the WAGP Tribunal, the amount stated in the notice shall be owing and shall be a state liability;
- (b) the application is dismissed in part by the WAGP Tribunal, the amount stated in

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- Agreed Fiscal Regime

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- National Labour Commission Regulations, 2006
- Pndc Law
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- Trade Policy
- W/ African Gas Pipeline Act, 2004

the notice which relates to that part of the application which was dismissed shall be owing and shall be a state liability;

(c) the WAGP Tribunal makes a determination that an amount is owing, then that amount shall be a state liability.

(8) The Company may in a return, elect to treat any part of a state liability as a credit in the calculation of the amount of income tax due to Ghana in respect of the Tax Year to which the return relates.

(9) A notice shall be given within 30 days before the submission of the return and where a notice is given in accordance with this subparagraph the liability of the Company to income tax for the Tax Year to which the return relates shall be reduced accordingly.

Taxable income

5. (l) "Taxable income" for any period equals the amount of WAGP income attributable to Ghana for that period less the aggregate of:

(a) allowable expenses attributable to Ghana for that period;

(h) capital allowances attributable to Ghana in respect of that period;

and (c) any allowable losses available in Ghana.

WAGP income and allowable expenses

6. For the purposes of this Schedule, "income" means any receipts or realised gains of a revenue nature, determined in accordance with the Accounting Principles and includes amounts

recovered by way of insurance claims, judicial or arbitral awards, recovered legal costs, rental or refunds, proceeds from sale or exchange of plant or facilities or supplies, or sale or licence of intellectual property, where under the Accounting Principles such amounts would be treated as income; and "expenses" means any payment or outflow or depletion of assets or incurrence of liabilities, other than distributions to equity participants.

WAGP income

7. (1) Subject to subparagraph (2), the amount of "WAGP income" for any Tax Year is the aggregate of payments accrued by the Company during that Tax Year that are derived from natural gas transportation operations which are WAGP Activities;

(b) income accrued during that Tax Year in respect of any debt claims in which the Company is the creditor; (c) any other income incidental to WAGP Activities accrued by the Company during that Tax Year; and (d) any Negative Pool Balance in respect of that Tax Year.

(2) WAGP income shall not include

(a) an amount accrued in respect of the disposal of any capital asset other than as provided under subparagraph (1)(d);

(b) any accrual in respect of the WAGP Authority Charge or any part of the WAGP Authority Charge;

(c) any dividend or any accrual in respect of any dividend received from any WAGP Company;

(d) an amount accrued or payable to a WAGP Company by a State under the International Project Agreement, except where and to the extent that the amount paid is compensation for or reimbursement of lost WAGP income; or

(e) an interest or other income accruing prior to the Fiscal Start Date.

Allowable expenses

8. (1) "Allowable Expenses" for a period means all expenses, other than non-allowable expenses, which are incurred in that period including accruals on any debt claims where the Company is the debtor wholly, exclusively and necessarily for the purpose of deriving WAGP income.

(2) For the avoidance of doubt, expenses shall not cease to be allowable expenses solely as a result of being incurred in respect of related party transactions.

(3) For the purposes of this Schedule, an expense shall be treated as incurred at the time at which and to the extent that an accrual in respect of the expense is properly recordable in the accounts of the Company in accordance with the Accounting Principles (or, in the case of costs incurred by shareholders or their affiliates, in the account of that person in accordance with its Accounting Principles).

Scope of "non-allowable expenses"

9. "Non-allowable expenses" means:

(a) expenses that are interest, to the extent that

(i) the average ratio of debt to equity for the consolidated group during the Tax Year exceeds 70:30 provided that in calculating the amount of allowable expenses, and non-allowable expenses, where this ratio is exceeded, the amount of the interest expense shall be pro-rated between the two in accordance with the amount of debt that falls within and exceeds this ratio, respectively;

(ii) such interest expense is incurred in an amount exceeding a reasonable commercial return for a borrowing between unconnected parties on the same terms for the same amount and entered into at the same time and for the same period and in the same currency as the relevant borrowing by the Company; and for the purpose of determining whether any interest expense exceeds.

The reasonable commercial return, where the Company and the WAGP Authority agree on a mechanism for determining reasonable interest rates for the purposes of this paragraph, or if the WAGP Authority approves the terms of a finance facility, then any interest expense incurred under a facility which complies with that mechanism or under any facility the terms of which are so approved, shall not be a non-allowable expense; or

(iii) the debt in respect of which the interest expense accrues, is incurred for the principal purpose of reducing the Company's tax liability.

(b) any expenses incurred in providing business entertainment or gifts, other than the cost of accommodation, food and drink attributable to any employee or director of any WAGP Company incurred in Ghana;

(c) legal fees or other costs of proceedings incurred in relation to arbitration of any determination under the International Project Agreement;

(d) any expenses incurred prior to the Fiscal Start Date;

(e) any expenses already taken into account as a deduction in respect of any tax liability calculated by reference to net profits or gains of any shareholder or affiliate of a shareholder in Ghana;

(f) any expenses in relation to any purchase of goods or services from any shareholder or an affiliate of a shareholder to the extent that the consideration given exceeds the consideration which would be payable in an arm's length transaction of substantially the same nature between unconnected parties;

(g) the cost of any letter of guarantee from shareholders or affiliates to the State, which is given in relation to the International Project Agreement;

(h) fines and penalties imposed under any law and the costs of indemnities to employees, contractors or agents of any WAGP Company in respect of the fines and penalties;

(i) any general overhead or general head office costs incurred by shareholders or affiliates and re-charged to any WAGP Company which does not include any amounts charged in respect of specific services supplied and separately invoiced by the shareholders or affiliates, to the extent that these exceed 1.5% of the Company's aggregate allowable expenses, excluding the amounts to be re-charged, for the relevant Tax Year;

(j) any depreciation for accounting purposes in the value of any assets;

(k) any capital expenditure or any debit for accounting purposes arising by reference to any capital expenditure;

(l) any payment by the Company to the WAGP Authority which is reimbursable through the WAGP Authority Charge; and \

(m) any payments of, or on account of, tax and any interest, supplement or penalty in respect of an underpayment of, or on account of, tax.

Reliefs

10. "Claimed reliefs" are the allowable losses available in Ghana plus capital allowances claimed in the return in respect of Ghana for the relevant Tax Year.

Loss Reliefs

11. (1) If in any Tax Year the amount of allowable expenses attributable to Ghana exceeds the amount of WAGP income attributable to Ghana, the excess shall be an "allowable loss" of the Company available in Ghana for that Tax Year.

(2) An amount of allowable loss shall be carried forward and may be claimed by the Company in any of the nine subsequent Tax Years in accordance with this paragraph and with paragraph 5 of this Schedule.

(3) Where an amount of any allowable loss is claimed and utilised by the Company in Ghana in any subsequent Tax Year,

(a) the amount of the taxable income of the Company in Ghana in respect of that Tax Year shall be reduced by the amount of allowable loss so claimed; and

(b) the amount of that allowable loss that may be carried forward for use in Ghana in subsequent Tax Years shall be reduced by the amount so used.

(4) The Company's claim of any amount of allowable loss shall be in chronological order beginning with those that arose in the earliest available Tax Year.

Capital Allowances

12. (1) All eligible development costs, and to the extent not included in the eligible development costs, all allowable expenses together with all expenses excluded from the definition of allowable expenses solely by reason of paragraph 9(a) incurred by the Company prior to the Fiscal Start Date, less the sum of all WAGP income derived by the Company prior to the Fiscal Start Date, including the amount of any interest income accruing to the Company prior to the Fiscal Start Date, shall be the amount of the "capital account" as at the Fiscal Start Date.

(2) At the end of each Tax Year ending after the Fiscal Start Date, the amount of the capital account of the Company shall be adjusted by adding the amount of capital expenditure incurred by the Company in that Tax Year, other than capital expenditure incurred prior to the Fiscal Start Date, and subtracting an amount equal

to the aggregate of the Disposal Proceeds for that Tax Year except that the result shall not leave the capital account as a negative number.

(3) To the extent that the aggregate of the disposal proceeds for any Tax Year exceeds the amount of the capital account after adding the amount of capital expenditure incurred by the Company in that year but prior to adjustment in accordance with subparagraph (2) in respect of the amount equal to the aggregate of the disposal proceeds for that Tax Year or in accordance with this subparagraph, the amount of the excess, the "Negative Pool Balance", shall be treated as WAGP income of the Company for the relevant Tax Year; and the amount of the capital account shall be reduced to zero.

(4) The Company may elect to claim an amount of relief, referred to as "capital allowances" equal to not more than 25% of the balance of its capital account at the end of the relevant Tax Year.

(5) The amount of the capital allowances shall be taken into account in reducing the taxable income of the Company for the relevant Tax Year as described in paragraph 5. and shall be deducted from the capital account at the commencement of the next succeeding Tax Year.

Jurisdiction of Fiscal Review Board

Subject to the Constitution and right to appeal to the WAGP Tribunal as set out below, the Fiscal Review Board has exclusive jurisdiction to hear applications filed by any Applicable Person for review of a decision or action or inaction of Ghana, the Tax Authority of Ghana, any other State Authority or the WAGP Authority in relation to the application of the Agreed Fiscal Regime including Non-WAGP Regime matters which are modified by the implementation of the Agreed Fiscal Regime, including the specific applications set out in this Part.

Right of appeal

(1) Any WAGP Company or any other Applicable Person aggrieved or dissatisfied by a decision or action or inaction of Ghana, the Tax Authority, any other State Authority or the WAGP Authority in relation to the application of the Fiscal Regime as provided in this Act, may.

Apply to the Fiscal Review Board for a review of or to appeal against that decision or action or inaction or for a direction to Ghana, the Tax Authority, other State Authority or WAGP Authority in respect of such matter, in accordance with this Part; or appeal to the WAGP Tribunal as set out in this Part.

(2) The right of appeal or review under this Part extends to all matters covered by the Agreed Fiscal Regime, including Non- WAGP Regime matters which are modified by the implementation of the Agreed Fiscal Regime.

(3) Ghana or a State Authority which is aggrieved or dissatisfied by a decision of the Fiscal Review Board may appeal against the decision of the Fiscal Review Board in accordance with this Part but where the matter being appealed is a matter that arises under Part 2 of this Schedule other than an appeal in relation to the application of paragraphs 4(3) to 4(8), 21 (2) and (7) and 23, then an appeal lies only if all States or the equivalent State Authority in all States join in the appeal.

Income tax

(1) Any Applicable Person dissatisfied with

- any Assessment or any amended or altered Assessment issued by a Tax Authority; or
- the failure of the Internal Revenue Service to issue an amended Assessment following the submission of amended Returns in accordance with paragraph 17(4)

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Internal Revenue Service.

(2) Any Applicable Person dissatisfied with any imposition of a withholding or deduction contrary to 21(1) and (2) or the failure of any person to treat any withholding in accordance with paragraph 21(7) may appeal to the Fiscal Review Board by notice in writing to the WAGP Authority, copied to the Internal Revenue Service.

(3) The notice must be given

- in the case of sub-paragraph (1)(a), within 30 days of the date on which the Assessment, amended Assessment or altered Assessment is issued; or
- in the case of sub-paragraph (1)(b) within 135 days of the submission of the amended returns as referred to in paragraph 17(4) or in the case of subparagraph (2) within 30 days of the date on which the Tax Authority seeks to impose the withholding or deduction or the date on which the Tax Authority fails to treat the withholding in accordance with paragraph 21(7).

VAT

(1) Any Applicable Person dissatisfied with

- any refund of VAT by the VAT Service or any refusal by the VAT Service to make repayment of VAT, in either case including the amount of any interest due; or
- any requirement of the VAT Service that VAT be paid or charged;

- any refusal in whole or in part by the VAT Service to allow a credit for Tax in respect of VAT paid and not refunded

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Commissioner of VAT and to any other State Authority involved.

(2) The notice shall be given within 60 days after the matters giving rise to the dissatisfaction of the Applicable Person come to that Applicable Person's attention.

Customs duties

(1) Any Applicable Person dissatisfied with any imposition of any customs duties pursuant to Part 4 of this Schedule, may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Commissioner Customs Excise and Preventive Service,

(2) The notice shall be given within 60 days after the date on which the matters giving rise to the dissatisfaction of the Applicable Person came to the Applicable Person's attention.

Other Taxes/Discrimination/Non-WAGP Regime

(1) Any Applicable Person dissatisfied with any imposition of any Tax by Ghana

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